

1 Ester Mazza
2 Walter Mazza
3 390 Redwing Cir.
4 Corona, CA 92882
(951) 870-7339
No Fax
No Email

5 IN PRO PER

2018 APR 13 AM 10:15
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE
BY _____

FILED

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 KMC INVESTMENT CORP.

12 Plaintiff(s),

13 vs.

14 ESTER MAZZA, WALTER MAZZA DOES 1
15 TO 10

16 Defendant(s).

ED CV18-00751

Case No.:

NOTICE OF REMOVAL UNDER 28 U.S.C.
1332, 1391, 1441 (a) and 1446

SUPERIOR COURT OF CALIFORNIA
CASE NO.: RIC1723693

17
18 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
19 CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND ITS ATTORNEYS OF
20 RECORD:

21 Pursuant to 28 U.S.C. 1332, 1391, 1441 (a) and 1446, the Defendant's, Ester Mazza and
22 Walter Mazza, Pro Se, files this Notice of Removal of this case from the Superior Court of
23 California, County of Riverside, to the United States District Court for the Central District of
24 California. In support of this Notice of Removal, Defendant states as follows:

25
26 CASE BACKGROUND AND FOUNDATION FOR REMOVAL

- 27 1. On or about December 18, 2017, Plaintiff commenced an action in the Superior Court of
28 California, in Riverside County against the Defendant/Cross Plaintiff. Defendant/Cross Plaintiff

Deck
#18
15

- 1 currently has a pending Complaint filed against the Plaintiff for Various Violations of the
2 California Civil Code, Declaratory Relief, and/or Intentional Misrepresentation and other causes
3 of action against the Plaintiff of this case.
- 4 2. Defendant/Counter Plaintiffs presently seek judgment against Plaintiff for injuries that
5 Defendant/Counter Plaintiffs allegedly suffered as a result of various violations under the Fair
6 Debt Collection Practices Act. Defendant/Counter Plaintiff's claims against Plaintiff are based
7 on Plaintiff's alleged misrepresentation of the amount of debt due, and their own fraudulent
8 actions.
- 9 3. True and correct copies of the Summons, Complaint and other pleadings or orders are Attached
10 as Exhibit "A" and incorporated by reference.
- 11 4. This Court has original jurisdiction over the matter pursuant to 28 U.S.C. 1331. Further, this
12 matter is one that may be removed to this Court pursuant to 28 U.S.C. 1441 because it is a civil
13 action based upon the Federal Debt Collection Practices Act.
- 14 5. Venue is proper in this Court because the State Court Action is pending in the Superior Court of
15 California, Riverside County. See 28 U.S.C. 1441 (a).

16
17 **COMPLETE DIVERSITY OF CITIZENSHIP**

- 18 6. There is complete diversity of citizenship between the parties.
- 19 a) Plaintiff is incorporated in a state other than California and their principal places of
20 business are located in states other than California. Thus, Plaintiff is not a citizen of
21 California.
- 22 b) Defendant/Counter Plaintiff is a citizen of California, residing in Riverside County.

23
24 **AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00**

- 25 7. Plaintiff does not quantify the amount of damages they seek to recover in this case. See
26 complaint, Prayers for Relief. From the face of the Complaint, however, it is apparent that the
27 amount in controversy more likely than not exceeds \$75,000.00, exclusive of interest and costs.

- 1 8. "The amount in controversy is ordinarily determined by the allegations of the Complaint, or,
2 where they are not dispositive, by the allegations in the Notice of Removal". See *Laughlin v.*
3 *Kmart Corp.*, 50F.3d 871, 873 (10th Cir.), cert denied, 516 U.S. 863 (1995).
- 4 9. When the plaintiff's damages are unquantified in the Complaint, the amount in Controversy can
5 be established by allegations in the Removal Notice by reference to allegations on the face of
6 the Complaint. *Cv. Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir 2001).
7 More specifically, the amount in controversy requirement can be satisfied by showing that it is
8 facially apparent from the Complaint that the claims more likely than not exceed \$75,000.00.
9 See *Allen v. R&H Oil and Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995); *Accord Singer v.*
10 *State Farm Mutual Automobile Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); See also *Gilmer v.*
11 *The Walt Disney Co., ET all.*, 915 F. Supp. 1001, 1007 (W.D. Ark 1996).
- 12 10. Here, the amount in controversy more like than not exceeds \$75,000.00 based on Plaintiff's
13 claims, their alleged injuries and the recovery sought.
- 14 11. Defendant/Counter Plaintiff denies the allegations in the Complaint. Taking those allegations
15 on their face as true, however, as this Court must do for the purpose of determining the propriety
16 of removal, it is clear that Plaintiff's claims, as evidenced by the documents attached hereto as
17 Exhibit "A" demonstrate an amount in controversy in excess of \$75,000.00
- 18 12. Given the complete diversity of the real parties and an amount in the controversy in excess of
19 \$75,000.00, this Court has jurisdiction over the causes of action and claims asserted in the State
20 Court Action pursuant to 28 U.S.C. 1332, and this action properly is removable pursuant to 28
21 U.S.C. 1441.
- 22 13. Diversity jurisdiction further exists in this case based on the following:
23 A. The Plaintiff, KMC INVESTMENT CORP., and/or its Successors and/or Assignees in
24 Interest, cannot state a claim for return of, damages to or diminution in volume of assets
25 it does not own, or can prove ownership.
26 B. Based on its lack of ownership of the subject property, the Plaintiff, KMC
27 INVESTMENT CORP., and/or its Successors and/or Assignees in Interest, has no
28 standing to bring the claims set forth in their Complaint or Motion.

1 C. Due to the fact that the Plaintiff, KMC INVESTMENT CORP., and/or its Successors
2 and/or Assignees in Interest, cannot state a claim upon which relief may be granted, the
3 only proper parties to this action are the Defendant/Cross Plaintiff.

4 14. If the party with no standing is disregarded, this Court has original jurisdiction over the action
5 pursuant to 28 U.S.C. 1332, and this case may be removed to this Court pursuant to U.S.C.
6 1441 (a).

7
8 **OTHER ISSUES**

9 15. This Notice of Removal is timely filed. See 28 U.S.C. 1446(b).

10 16. This Notice of Removal has been served on Plaintiff's counsel. A Notice of Filing of Notice of
11 Removal to Federal Court (attached as Exhibit "A") will be filed in the Superior Court of
12 California, County of Riverside, as soon as this Notice of Removal has been filed in this Court.

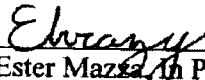
13 17. A Copy of the complete record maintained by the Clerk of the Superior Court, County of
14 Riverside, California is attached to this Notice of Removal as Exhibit "A".

15 **CONCLUSION**

16 Because Plaintiff and Defendant are citizens of different states, and the amount in
17 controversy exceeds \$75,000.00, exclusive of interest and costs, this Court has jurisdiction over
18 Plaintiff's claims pursuant to 28 U.S.C. 1332. Defendant is therefore entitled to remove this case to
19 this Court pursuant to 28 U.S.C. 1441.

20 Wherefore, Defendant requests that the action now pending before the Superior Court of
21 California, County of Riverside, Civil Action No. RIC1723693, be removed to this Court.

22 DATED: 04/13/2018

23 
Ester Mazza, In Pro Per

24
25 
26 Walter Mazza, In Pro Per
27
28

Exhibit “A”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

01/12/2018 07:16 FAX 714 821

0002/0016

SUMMONS
(CITACION JUDICIAL)
UNLAWFUL DETAINER—EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

M-130

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

ESTER MAZZA, WALTER MAZZA, DOES 1 TO 10 INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

KMC INVESTMENT CORP

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

1. The name and address of the court is:
 (El nombre y dirección de la corte es):

RIVERSIDE SUPERIOR COURT
 4050 MAIN STREET
 4050 MAIN STREET
 RIVERSIDE, CA 92501
 RIVERSIDE

CASE NUMBER:
(Número del caso):

R14723693

951-689-9644
951-352-2325 FAX

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
 (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
- BARRY LEE O'CONNOR, ATTORNEY AT LAW, BAR #134549
 BARRY LEE O'CONNOR, A PROFESSIONAL LAW CORP.
 3691 ADAMS STREET
 RIVERSIDE, CA 92504

951-689-9644
951-352-2325

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) ☒ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:
(Fecha) 12-18-17Clerk, by LS Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

4. NOTICE TO THE PERSON SERVED: You are served

- a. ☐ as an individual defendant.
 b. ☐ as the person sued under the fictitious name of (specify):
 c. ☐ as an occupant
 d. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ CCP 415.46 (occupant) ☐ other (specify):

5. ☐ by personal delivery on (date):

01/12/2018 07:17 FAX 714 821 10

00003/0018

1 BARRY LEE O'CONNOR & ASSOCIATES, A PLC
 2 BARRY LEE O'CONNOR, ATTORNEY AT LAW, BAR #134549
 3 3691 ADAMS ST.
 4 RIVERSIDE, CA 92504

5 (951) 689-9644

6 Attorney(s) for PLAINTIFF
 7

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
 9 RIVERSIDE

10 KMC INVESTMENT CORP

11 Plaintiff(s)

12 vs.

13 ESTER MAZZA, WALTER MAZZA, DOES 1 TO 10
 14 INCLUSIVE

Defendant(s)

No. *R117 2369B*

COMPLAINT FOR UNLAWFUL
 DETAINER AFTER FORECLOSURE
 [CCP SEC.1161A]
 DEMAND LESS THAN \$10,000.00

15 Plaintiff alleges:

16 1. Plaintiff is a limited liability company authorized to do
 17 business and is doing business within the State of California.

18 2. Plaintiff is informed and believes, and thereon alleges,
 19 that Defendants Ester Mazza, Walter Mazza, DOES 1 TO 10 INCLUSIVE, are
 20 individuals who reside at 390 Redwing Cir Corona CA 92882, County of
 21 Riverside, State of California, in this judicial district.

22 3. Plaintiff seeks to recover possession of the premises by
 23 this action.

24 4. The true names and capacities, whether individual,
 25 corporate, associate or otherwise of Defendants sued as Does 1 through
 26 10 are unknown to Plaintiff, who therefore sues said Defendants

27 ///

01/12/2018 07:18 FAX 714 821 0

0004/0018

1 by such fictitious names, and Plaintiff will amend this Complaint to show
2 their true names and capacities when the same have been ascertained.

3 5. On or about 03/15/17, a foreclosure sale was held and
4 Plaintiff took title to the subject property at the foreclosure sale and
5 received an executed Trustee's Deed upon Sale, which was recorded in the
6 Official records in the office of the County Recorder of Riverside
7 County, California. A true and correct copy of the Trustee's Deed Upon
8 Sale is attached hereto as Exhibit "A" and is incorporated herein by
9 reference.

10 6. On 12/13/17, A Three/Ninety Day Notice to Quit and Notice of
11 Tenants Rights were served on Defendants, Ester Mazza, Walter Mazza, DOES
12 1 TO 10 INCLUSIVE, for the period stated in the Notice has expired. A
13 copy of the Notice is incorporated by reference and attached as Exhibit
14 "B".

15 7. Defendant's possession of the premises is without Plaintiff's
16 consent and Plaintiff demands immediate possession of the premises.

17 8. The reasonable value of the use and occupancy of the premises
18 is the sum of \$50.00 per day, and damages have accrued to Plaintiff at
19 that rate since 12/17/17, and will continue to accrue at that rate so
20 long as Defendants remain in possession of the premises. Plaintiff waives
21 all damages in excess of \$25,000.00.

22 WHEREFORE, Plaintiff prays judgment for:

- 23 1. For restitution of the premises;
24 2. For the reasonable value of the use and occupancy of the
25 premises in a sum according to proof, until the date that Judgment is
26 entered;

27 ///

28

01/12/2018 07:18 FAX 714 821 0

0005/0016

- 1 3. For costs of suit; and
2 4. For such other and further relief as the court deems
3 proper.
4

5 Dated: 12/18/17
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LS
Barry Lee O'Connor

Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


WALTER MAZZA, In Pro Per

1 **CERTIFICATE OF SERVICE BY MAIL**

2

3 The undersigned hereby certifies that on 04/13/2018, she served a copy of

4

5 **NOTICE OF REMOVAL**

6

7 By placing said copy in an envelope addressed to the person(s) hereinafter named, at the

8 places and address shown below, which are the last known addresses, and mailing said envelope

9 and contents in the U.S. Mail in Van Nuys, California.

10

11 Barry Lee O'Connor & Associates, A PLC

12 Attn: Barry Lee O'Connor Attorney at Law, Bar #134549

13 3691 Adams St.

14 Riverside, CA 92504

15

16

17

18

19 

20 Alexia Becerra

21

22

23

24

25

26

27

28